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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 741

JAMES ANDERSON, ET AL., TRUSTEES OF THE HERMANN HOSPITAL ESTATE, OWNERS OF TRACT No. AR-108, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 41-49) is not reported. The opinion of the court of appeals (R. 64-68) is reported at 179 F. 2d 281.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 1950 (R. 68). The petition for a writ of certiorari was filed on April 10, 1950.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether in a condemnation proceeding instituted by the United States the property involved should be valued as of January 30, 1946, the date of the order granting immediate possession, or as of November 14, 1946, the date of the filing of the declaration of taking.

STATEMENT

The United States filed a petition on January 30, 1946, to condemn the 1671.4-acre tract of land involved here, along with other tracts, for the establishment of the Addicks Dam and Reservoir in Harris County, Texas (R. 7-15). On the same day the district court entered an order granting the United States the right to immediate possession pursuant to Section 5 of the Rivers and Harbors Act of July 18, 1918 (40 Stat. 911, 33 U.S.C. 594 (R. 15)).

On November 14, 1946, the United States filed a declaration of taking and deposited the sum of $167,000 as estimated just compensation for this tract (R. 19, 24).

At the trial to determine value, a dispute arose between the parties as to the date on which the land should be valued (R. 43). The United States contended that the property should be valued as of January 30, 1946, the date on which it secured pos-

session. The condemnees urged that the property should be valued as of November 14, 1946, the date on which title passed by virtue of the filing of the declaration of taking. The district court, sitting without a jury, reserved ruling on the matter and received evidence of value as to both dates (R. 43). The court found that on January 30, 1946, the value of the property was $227,100 and that on November 14, 1946, its value was $261,165 (R. 50). It ruled that the property should be valued as of January 30, 1946, the date of possession by the United States, following the decision of the court below in *11,000 Acres of Land, etc.* v. *United States,* 152 F. 2d 566, certiorari denied, 328 U.S. 835 (R. 42, 46, 51). Accordingly, judgment was entered on August 4, 1948, awarding petitioners the sum of $227,100 as just compensation (less $167,000 already paid) with interest at 6 per cent on $227,100 from January 30, 1946, to November 14, 1946, and on $60,100 ($227,100 less $167,000) from November 14, 1946, until paid (R. 51). The court of appeals affirmed the judgment on January 10, 1950, reaffirming its decision in the *11,000 Acres* case, *supra* (R. 64-68).

ARGUMENT

It is the settled rule in federal condemnation proceedings that the date of taking for purposes of valuation is the date that possession is taken. *United States* v. *Rogers,* 255 U.S. 163, 169; *Seaboard Air Line Ry.* v. *United States,* 261 U.S. 299;

Jacobs v. *United States*, 290 U.S. 13.[1] And, as the court below held (R. 67), the same rule applies when, subsequent to taking possession, the United States files a declaration of taking. *11,000 Acres of Land, etc.* v. *United States*, 152 F. 2d 566 (C.A. 5), certiorari denied, 328 U.S. 835; *Comparet* v. *United States*, 164 F. 2d 452 (C.A. 10); *Bank of Edenton* v. *United States*, 152 F. 2d 251 (C.A. 4).[2]

Petitioners do not assert that there is any conflict of authority and they cannot do so because there is none. The authorities cited above, which petitioners ignore, demonstrate the correctness of the rule. Petitioners' argument is largely based upon the circumstance that upon the filing of the declaration of taking title vests in the government. But when, as here, possession has already been acquired by the government under other statutes, the principal purpose of invoking

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[1] See also *Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106, 123; *Olson* v. *United States*, 292 U. S. 246, 255; *United States* v. *Creek Nation*, 295 U. S. 103, 111; *Shoshone Tribe* v. *United States*, 299 U. S. 476, 495; *United States* v. *Klamath Indians*, 304 U. S. 119, 123; *Danforth* v. *United States*, 308 U. S. 271, 283; *Albrecht* v. *United States*, 329 U. S. 599, 602.

[2] Other courts have uniformly applied this principle. See, for example, *United States* v. *6.87 Acres of Land, etc.*, 147 F. 2d 351, 352 (C.A. 2); *United States* v. *150.29 Acres of Land, etc.*, 148 F. 2d 33, 38 (C.A. 7), certiorari denied *sub nom. Eline's Inc.* v. *Lakeside Laboratories*, 325 U. S. 883; *Brett* v. *United States*, 86 F. 2d 305, 306 (C.A. 9), certiorari denied, 301 U. S. 682; *United States* v. *26.3765 Acres of Land, etc.*, 62 F. Supp. 910, 911 (E.D.N.Y.); *United States* v. *412.715 Acres of Land, etc.*, 60 F. Supp. 576, 577 (N.D. Cal.); *United States* v. *12,918.28 Acres of Land, etc.*, 57 F. Supp. 893, 895 (W.D. La.); *United States* v. *17,280 Acres of Land, etc.*, 57 F. Supp. 745, 747 (D. Neb.).

the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U.S.C. 258a-e, is to reduce interest liability and to make some funds available to the condemnees. Cf. *United States* v. *Miller,* 317 U.S. 369, 381. Petitioners' contention that the result of the decision below is unfair lacks merit because, if the contrary view were taken, the Government could deprive the owner of all use of his property for an indefinite period and yet choose the date of taking most unfavorable to him by filing the declaration of taking at a time when the market is lowest, or, if market prices have increased, by not filing a declaration of taking at all. It is much fairer to fix the date of valuation by the date of the taking of possession so that neither the Government nor the owner will suffer advantage or disadvantage from subsequent variations in the market. To the extent that payment is not deposited at the time of taking possession, or during the period of possession, the landowner is compensated by recovery of interest upon the unpaid amount from the date possession was taken. *Seaboard Air Line Ry.* v. *United States,* 261 U.S. 299, 305; *United States* v. *Rogers,* 255 U.S. 163, 169. Petitioners emphasize the fact that until a declaration of taking is filed the government may abandon the proceedings. In that event, the government will compensate the owners for the use of the property during the time it has been in possession. *United States* v. *Great Falls Mfg. Co.,* 112 U.S. 645, 658;

Moody v. *Wickard,* 136 F. 2d 801, 803-804 (C.A. D.C.), certiorari denied, 320 U.S. 775. But when a declaration of taking is not used, the fact that the government has the election whether to pay the award and acquire title (*Danforth* v. *United States,* 308 U.S. 271, 284) does not change the date of valuation. Similarly, the fact that the declaration of taking procedure enables the government at its election to acquire title at any time prior to the final judgment does not justify a change in the valuation date.

CONCLUSION

The decision of the court below is clearly correct, and the case does not warrant review by this court. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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MAY, 1950.

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